

THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

MARTIN J. WALSH, SECRETARY OF LABOR, :  
UNITED STATES DEPARTMENT OF LABOR, :

Plaintiff, :

v. :

3:21-CV-1628  
(JUDGE MARIANI)

LA TOLTECA WILKES BARRE, INC. d/b/a :  
LA TOLTECA AUTHENTIC MEXICAN :  
RESTAURANT and CARLOS DE LEON, :

Defendants. :

ORDER

AND NOW, THIS 16<sup>th</sup> DAY OF DECEMBER 2023, upon consideration of

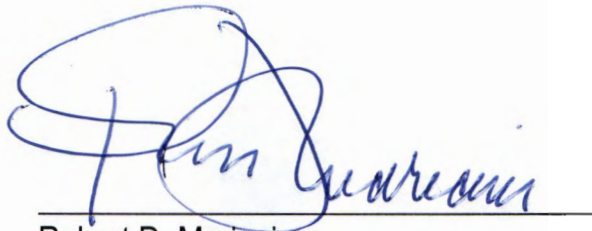
Plaintiff's Motion for Partial Summary Judgment (Doc. 21) and all relevant documents, for  
the reasons set forth in the accompanying Memorandum Opinion, **IT IS HEREBY**

**ORDERED THAT:**

1. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that Defendants violated Sections 6 and 15(a)(2) of the minimum wage provisions of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 206(a) and 215(a)(2), by paying many of their tipped employees employed as servers and bartenders for rates less than the applicable statutory minimum rate prescribed in Section 6 of the Act is **GRANTED**;

2. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that Defendants' practice of seizing a portion from the tipped employees' tips violated Section 3(m)(2)(B) of the Act, 29 U.S.C. § 203(m)(2)(B) is **GRANTED**;
3. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that Defendants have violated the provisions of Sections 7 and 15(a)(2) of the overtime provisions of the FLSA, 29 U.S.C. §§ 207(a)(1) and 215(a)(2) by failing to pay employees overtime at a rate of at least one-and-one-half times their regular rate is **GRANTED**;
4. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that Defendants have violated the Section 11(c) and 15(a)(5) recordkeeping requirements of the FLSA, 29 U.S.C. § 211(c), as a result of their failure to make, keep and preserve adequate and accurate records of many of their employees of the wages, hours and other conditions of employment which they must maintain as prescribed by the regulations issued and found at 29 C.F.R. Part 516 is **GRANTED**;
5. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that all defendants are "employers" under Section 3(d) of the FLSA and are therefore liable for the violations of the FLSA is **GRANTED**;
6. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) that Defendants are liable under Section 16(c) of the FLSA, 29 U.S.C. § 216(b) for liquidated damages in an amount equal to their liability for back wages as a result of their FLSA violations is **GRANTED**;

7. Plaintiff's Motion for Partial Summary Judgment (Doc. 21) for injunctive relief is **GRANTED**. Defendants and its agents and representatives are hereby **PERMANENTLY ENJOINED** from failing to comply with the minimum wage, overtime compensation, and recordkeeping requirements of the FMLA;
8. Trial in the above-captioned matter to determine lost wages, liquidated damages, and any other relief will be scheduled by separate Order.

A handwritten signature in blue ink, appearing to read "Robert D. Mariani", is written over a horizontal line.

Robert D. Mariani  
United States District Judge